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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8689 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRAJBEN R MADALIYA,SINCE DECEASED THROUGH HER HEIRS&L.R
Versus
DISTRICT EDUCATION OFFICER

Appearance:
MR MD RANA for Petitioners
MR MAYANK VORA for Respondent No. 1
MR PS PATEL for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/06/2001

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a direction to the respondents to fix the pay scale and pay the arrears of salary in view of the

order dated 1st April, 1976 annexure "B" protecting her salary which she was getting before the closure of the scheme and a direction to the respondents to grant her the pay scale of Rs. 290-560 of the sewing teacher and to pay arrears accordingly and for a further direction to give her the pay scale of a trained teacher with arrears thereof and consequential pay fixation of the Third Pay Commission accordingly. The petitioner was serving as an Assistant Teacher at Upleta in the Government primary school. She was initially appointed on 15th December, 1959 as an instructor in the sewing classes on officiating basis. She was transferred from places to place in different schools under District Education Officer, Jamnagar. She served in small villages and the Taluka Development Officer is the authority who made the relevant entries in the service book. The Revision of pay Rules was notified by a notification dated 17th March, 1964 and the pay scale prescribed for the petitioner was Rs. 117-4-145 and the salary of the petitioner was fixed at Rs.121/-. The Gujarat Public Service Pay Rules, 1969 were made effective and the pay scale prescribed for the petitioner was Rs. 160-6-190-EB-7-225 from 1st January, 1967 and her salary was fixed at Rs. 197/-. Thus, the petitioner was drawing the salary with earned increments. The Second Pay Commission prescribed the pay scale of the petitioner from 1st January, 1973 in the pay scale of Rs. 350-12-410-EB-12-470-15-550-20-600 and the pay of the petitioner was fixed at Rs.386/-+ increment which comes to Rs.422/-. The scheme in which the petitioner was appointed was closed with effect from 31st March, 1976 but by an order dated 1.4.76, due to long tenure of petitioner's service the petitioenr was absorbed with effect from 1st April, 1976. Though she was getting the salary of a trained teacher, but she was given the pay scale of Rs.260-6-308-EB-6-326-8-350 and the petitioner's pay was fixed at Rs.360/- and this pay of Rs.360/- was for untrained teacher though the petitioner was a trained teacher. Some order dated 14th October, 1976 was passed wherein it is mentioned that the petitioner was appointed as an instructor and she was serving in different Talukas as sewing teacher. She was relieved on 31st March 1976 taking into account her long service. She had been appointed as a fresh recruit by an order dated 1.4.76 as a primary teacher. She reported for duty on 1st April, 1976 pursuant to the proposal made by the department. Therefore, the petitioner's services were directed to be treated as continuous service for the purpose of salary and pension. But she would not be entitled for seniority.

2. The contention of the learned counsel for the petitioner is that the petitioenr was treated as a trained teacher and was working as a sewing teacher in the primary school school since her appointment in the year 1959. She was absorbed and her services were continued by an order dated 14.10.76. The respondents have committed an error in fixing the salary of the petitioner on the basis of the pay scale of Rs.260-350. That was a provided for untrained teachers though the petitioner was a trained teacher and she was treated as a trained teacher. The pay of the petitioner was fixed at Rs.386/- in the pay scale of Rs.350-600 with effect from 1.1.73 in the year 1976. When her services were relieved, she was getting Rs.422/- as the petitioner's services were treated as continuous and the petitioner is entitled for the pay scale of Rs.350-600 and her salary was fixed at Rs.386/- on 1.1.76. The respondents were competent to fix the salary of the petitioner as an untrained teacher. Hence, this petition has been filed challenging the action of the respondents.

3. Heard the learned counsel for the parties. I have carefully considered the contention of the learned counsel for the petitioner. It appears that the petitioner made a representation dated 16.11.1983 to the authority concerned and it is informed by the learned counsel for the petitioner that representation has not yet been decided by the respondents. In view of the fact that the salary of the petitioner was fixed at Rs.386/in the pay scale of Rs.350-600 with effect from 1.1.73 and she was getting the salary in the year 1976 at the time when the scheme was closed. She was getting the salary of Rs.422/- in the year 1973 when the scheme was closed and the petitioner was relieved on 31st March, 1976. By an order dated 14.10.76, the services of the petitioner were absorbed and were directed to be continued and it appears that the petitioner was appointed as a fresh recruit as a trained teacher by an order dated 1.4.76. Under these circumstances, she would be entitled for the salary, leave and pension on the basis of the revised pay scale of Rs.350-600 provided for trained teacher. It is also pointed out by the learned counsel for the petitioner that the petitioner was entitled for the pay scale of Rs.290-560 provided for sewing teacher with effect from 1.1.73. It is not proper for this court to make any observation but as the petitioner's representation is pending and that has not yet been decided by the respondent authority, I think it proper to direct the respondent authority to decide the representation made by the petitioner which is filed on 16.11.83 and which was pending before the respondent

authorities.

4. Thus, this petition is disposed of finally with a direction to the respondent authorities to decide the representation of the petitioner in accordance with law within a period of three months from the date of receipt of writ of this court. In case, the record of the petitioner's service is not available with the department, the heirs and legal representatives of the petitioner would be at liberty to file a fresh representastion before the authority concerned for the purpose of fixation of salary, leave, pension etc. Rule is discharged with no order as to costs.

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